

●Employment Applications

I. General Requirements of All Applications:

a. The packet should include:

- i. Application, containing information required in Bankruptcy Rule 2014;
- ii. Affidavit/Verified Statement Filed Pursuant to Rule 2014; and
- iii. Certificate of Service.

b. *Nunc Pro Tunc*: Local Rule 214 provides that the Court *may* grant *nunc pro tunc* treatment to applications on an *ex parte* basis, with the effective date of the order referring back to the date of the filing of the Application. Any request to allow *nunc pro tunc treatment* to refer back to a date that precedes the filing of the Application will require a Rule 202 Notice, specifically requesting this treatment and will need to disclose why the Application was not filed at or near the outset of the employment.

II. When is a Rule 202 Notice Required?

An application to employ a professional *generally* does not require the filing and service of a Rule 202 Notice. Under the following circumstances and pursuant to Local Rule 214, however, our division will issue a notice of deficiency, requiring that the application be sent out under a Rule 202 notice:

a. if a retainer has been given. Our division will review both the Notice and the Application for the following:

- i. The amount of retainer paid & the balance remaining on petition date;
- ii. The source of the retainer. This division reviews for greater disclosure when the professional's fees are contributed by a principal or insider of the debtor. *In re Lotus Prop. LP*, 200 B.R. 388 (Bankr. C.D. Cal. 1996). The Application and Notice must then set forth sufficient facts from which a party-in-interest can determine if a conflict of interest exists. For example, if the payor/insider has received a transfer that could be subject to attack as a preference or fraudulent conveyance, if the payor/insider is a guarantor of the Debtor's indebtedness, if the payor/insider is also a creditor, these facts should be disclosed. Conversely, if no such facts exist to create potential conflicts between the Debtor and the payor/insider, counsel should so represent to the best of its ability. Secondly, the payor/insider should retain independent counsel. Finally, the payor/insider should provide a written acknowledgment that Debtor's counsel's duty of loyalty is owed solely to the Debtor, and not the insider. These disclosures should be made at the outset of the case, with the filing of the Application.

b. if other potential conflicts exist. Both the Notice and Application should disclose any potential conflicts. Examples of possible conflicts include:

- i. The professional has received payments in the months preceding the

bankruptcy filing that might be subject to an avoidance action (i.e. as a preference or possibly as a fraudulent conveyance, such as when an affiliate pays the professional's invoice, instead of the party for whom the services were performed.);

- ii. The professional has rendered and/or is continuing to render services to creditors of the Debtor, on *unrelated matters*. This division reviews Applications to determine whether the Applicant has had or currently has a significant relationship with particular creditors of the Debtor. What constitutes a "significant relationship" necessarily varies depending on such factors as the size of the professional's firm, the make-up of its clientele, and the amount of fees charged to the client. The Application should attempt to quantify the extent of the past and/or present relationship, by means of disclosing the aggregate amount of fees paid by such client or by other means that will allow creditors and the Court to assess the disinterestedness of Applicant.
- iii. Representing multiple debtors. If such employment is proposed, the Notice and Application should disclose any potential conflicts between the respective debtor estates, including without limitation, inter-company accounts and transfers and/or guarantor relationships.

c. if compensation arrangements are proposed. Agreements to pay professionals other than on an hourly basis, subject to the traditional fee application process, must be disclosed in both the Notice and Application. Examples include: contingency fees, fees based on a percentage of sales price, and flat fee arrangements.

d. if Applicant seeks or asserts a lien in and/or on the Debtor's property. Examples include: statutory liens, security interests, or deeds of trust/mortgages. Disclosure should include the source(s) of the lien rights, a description of the affected property, and the dates on which such liens were acquired.

Caveat: The Court reserves the right granted under Local Rule 214 to require a Rule 202 Notice of a professional's application under other circumstances, whenever the Court deems additional notice to be necessary or advisable.